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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO COUNTY OF TWIN FALLS

In Re SRBA	)	Subcases 47-16433, <i>et al.</i>
	)	(see list of 26 subcases attached)
Case No. 39576	)	(USDA/FS)
	)	
	)	RESPONSE TO UNITED STATES'
	)	MOTION FOR RECONSIDERATION OF
	)	PRESIDING JUDGE'S MEMORANDUM
	)	DECISION AND ORDER ON CHALLENGE
_____	)	

This is the response of Bruce Byron Bedke and Jared K. Bedke, pro se litigants, to the UNITED STATES' MOTION OF RECONSIDERATION OF PRESIDING JUDGE'S MEMORANDUM DECISION AND ORDER ON CHALLENGE (herinafter US MOTION) in the above named subcases.

I.R.C.P 11(a)(2)(B)

I.R.C.P. 11(a)(2)(B) states:

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“A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).”

1. UNITED STATES' MOTION UNTIMELY

The first issue to be determined is when the Court's MEMORANDUM DECISION AND ORDER ON CHALLENGE, ORDER OF RECOMMITMENT (hereinafter ORDER) became a final judgment. Administrative Order 1 provides that “Any party to the adjudication, including parties to the subcase, may file a Motion to *Alter or Amend* within 21 days from the date the *Special Master's Recommendation* appears on the Docket Sheet.” (A.O.1 at 19, emphasis unchanged) Clearly the court has already determined that any interlocutory order becomes a final judgment the day that the order appears on the Docket Sheet. The SRBA Court's ORDER in these subcases was entered on March 22nd, 2005, and appeared in the Docket Sheet dated April 7, 2005. The US MOTION was dated and filed May 19, 2005 outside the 14 day window provided by I.R.C.P. 11(a)(2)(B).

The US MOTION should be denied because they failed to file within the time period provided by I.R.C.P. 11(a)(2)(B).

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2. UNITED STATES CANNOT FILE MOTION TO RECONSIDER ON 55(c) MOTIONS

In its ORDER, the Court states “In subcases *for which partial decrees have not been entered*, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in *AOI* for filing late claims. *Order on Motion to Set Aside Partial Decrees and File Late Objections; Order of Reference to Special Master Cushman*. (January 31, 2001)(A.L. Cattle). *AOI* does not expressly provide a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. *Id.*, see *AOI* sec 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) leave to amend a notice of claim shall be freely given when justice so requires). In the *A.L. Cattle* subcase, this Court held that the I.R.C.P. 55(c) standard should be applied to late objections to which partial decrees have not been entered, rather than the I.R.C.P. 60(b) standard.” (see ORDER, pp 5-6, emphasis unchanged). The Bedkes’ motions to file late objections therefore were motions filed under I.R.C.P. Rule 55(c).

I.R.C.P. 11(a)(2)(B) specifically states, “there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).”

The US MOTION should be denied because the Court’s ORDER was an order on motions filed under Rule 55(c), and as such the US MOTION is without basis in I.R.C.P. 11(a)(2)(B).

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3. UNITED STATES HAS FAILED TO SHOW THAT BEDKES WEREN'T CONFUSED.

In the US MOTION the United States makes similar, if not identical, arguments to those that they have made in their previous pleadings and at oral argument in the subcases at hand. The United States continues to argue that the Bedke's claim of confusion does not hold up.

To determine whether or not the Bedkes' actions were willful, the Court set out what the good cause standard of Rule 55(c) takes into account. (see ORDER, at 6) This court went on to rule "The Bedkes have consistently alleged that they were confused by the process. Their confusion, for whatever reason, may have not been reasonably prudent, but it does not appear to have been willful. Based upon the record in this matter, the court finds that the Bedkes' conduct in failing to file timely objections was not clearly willful." (*Id.*, at 12)

The Court also cites similar criteria applied by other jurisdictions, one being, "(2) prompt action by the defaulting party to correct the default". As soon as the Bedkes became aware of the need to file late objections, they immediately began an investigation to see what claims needed to be objected to and filed objections and their corresponding motions (see Transcript of Hearing attached to the US RESPONSE as Exhibit A, pp 40 – 41, ln 14 et. seq.). The Bedkes' actions clearly demonstrate that their default was not willful.

4. THE UNITED STATES MADE NO CHALLENGE TO THE SPECIAL MASTER'S ORDER PARTIALLY STAYING SUBCASES

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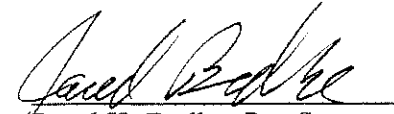
The United States also argues that they weren't prepared to wait over five years to resolve these subcases.

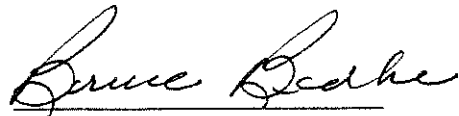
The Special Master made an ORDER PARTIALLY STAYING SUBCASES on August 6, 1999. The United States did not make any motions to reconsider the Special Master's Order. The United States did not make any motions to Alter or Amend. The United States did not Challenge the Special Masters Order. The United States did, however, participate in mediation and settlement negotiations with the Bedkes and many other private claimants during the stay. The result of these negotiations was a global stockwater settlement reached with all parties except Bruce and Jared Bedke that resolved many of the outstanding motions to file late objections to hundreds of the United States' water claims state wide. While the United States might have been "generally opposed" to a stay of the litigation, they did accept the Special Master's Order without challenge and certainly have benefited from the near 5 year stay.

CONCLUSION

For the reasons stated above the Court should deny the UNITED STATES' MOTION OF RECONSIDERATION OF PRESIDING JUDGE'S MEMORANDUM DECISION AND ORDER ON CHALLENGE.

Dated this 15th day of June, 2005.


Jared K. Bedke, Pro Se


Bruce Byron Bedke, Pro Se

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CERTIFICATE OF SERVICE

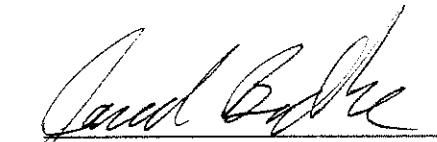
I hereby certify that on this 15th day of June, 2005 I served a true and correct copy of the foregoing RESPONSE TO UNITED STATES' MOTION OF RECONSIDERATION OF PRESIDING JUDGE'S MEMORANDUM DECISION AND ORDER ON CHALLENGE upon the following individuals by placing the document in the United States Mail, postage prepaid, addressed as follows:

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Jared K. Bedke

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ATTACHMENT 1

Subcase Nos:

47-16433
47-16434
47-16435
47-16437
47-16438
47-16440
47-16441
47-16442
47-16443
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47-16458
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47-16470
47-16471
47-16474

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